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Supreme Court of the United States

OCTOBER TERM, 1967

No. 1[redacted]211

UNITED BOND AND MORTGAGE CORPORATION,
PETITIONER,

versus

CROWN CENTRAL PETROLEUM CORPORATION,
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioner prays that a Writ of *Certiorari* issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case on March 10, 1967, affirming an order of the United States District Court for South Carolina.

OPINIONS BELOW

The order of the District Court, dismissing the complaint in this action, is set forth in the record. (R, pp. 10-20.) *

The opinion of the Court of Appeals, affirming the District Court order in a very brief decision, not yet officially reported, is printed in Appendix A to this petition.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 10, 1967. No petition for rehearing was filed in the Circuit Court of Appeals. The jurisdiction of this Court is invoked under 28 USC 1254(1).

QUESTION PRESENTED

Does the District Court have original jurisdiction of a civil action in which plaintiff attacks a state court judgment, **not on its merits**, but on the basis of its unconstitutionality allegedly caused by the defendant and illegally concealed from the plaintiff by the defendant until after it was final and had been granted and enforced by the state court without due process or equal protection of the law in violation of the Fourteenth Amendment?

STATUTES INVOLVED

The statutes involved are 28 USC 1331 and 28 USC 1332, both providing for civil actions in which the District Courts shall have original jurisdiction. The pertinent provisions of these code sections are printed in Appendix B to this petition.

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* References are to the appendix to the appellant's brief in the Circuit Court and will be cited as "R" in this petition.

STATEMENT

In a civil action in the state court where Crown alleged fraud and obtained judgment against United, the state court allowed Crown's counsel, without notice to United, to prepare in its entirety a purported "Master's Report" containing all of the findings of fact and conclusions of law upon which said judgment was based.

About two years after said judgment was final, United discovered the above stated facts and brought action in the District Court, under 28 USC 1331 and 1332, to recover from Crown the amount allegedly taken from it without due process of law under said state court judgment. United and Crown are corporations of different states, and the amount in controversy exceeds $10,000.00, exclusive of interest and costs.

The District Court dismissed the complaint in this action, with prejudice, by order dated August 23, 1966. On appeal by United, the Fourth Circuit Court of Appeals affirmed the District Court order by its decision dated March 10, 1967. This is a petition for a Writ of *Certiorari* to review that decision.

REASONS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI

1. The Fourteenth Amendment prohibits the state court, as well as other branches of state government, from depriving citizens of property without due process of law, and anyone so deprived is certainly entitled to relief in some court. In this case, the plaintiff did not discover that its constitutional rights had been violated until after the state court judgment was final and it was too late to get relief in the state court action. The plaintiff was entitled to seek relief in the District Court which has jurisdiction

under Sections 28 USC 1331 and 1332. These sections of the law are mandatory, and the refusal of the District Court to assume jurisdiction of the plaintiff's civil action thereunder was itself a denial of due process in violation of the Fifth Amendment.

2. The decision of the Fourth Circuit Court of Appeals in this case is inconsistent with its previous opinion in the case of *Chicopee Manufacturing Corporation v. Kendall Company,* 288 F. (2nd) 719, in which it held that "there is no authority in the federal courts that countenances the preparation of the opinion by the attorney for either side. That practice involves the failure of the trial judge to perform his judicial function, and when it occurs without notice to the opposing side, as in this case, it amounts to a denial of due process." In the present case, even though the District Court order was affirmed, the Circuit Court did state in open court that it abhorred the practice of allowing the preparation of the court's opinion in any case by counsel for either side without notice to the opposing side.

3. Assuming that the District Court was correct in stating in its order that "the practice is well established in this State" (R, p. 17), it is reasonable to conclude that the state courts are in widespread violation of the Fourteenth Amendment by following such unconstitutional practice. To the extent that this unconstitutional practice prevails in the trial courts, an unknown number of litigants are being deprived of their constitutional rights without their knowledge because of the clandestine nature of such practice which involves a complete lack of notice to the losing party in the litigation. Assuming that such practice is unconstitutional, it will be in the public interest to have a ruling to that effect in this case by the United States Supreme Court.

CONCLUSION

For the foregoing reasons, this petition for a Writ of *Certiorari* should be granted.

Respectfully submitted,

CHARLES F. COOPER,
4813 Forest Drive,
Columbia, South Carolina,
Counsel for Petitioner.

APPENDIX A

Opinion of the United States Court of Appeals for the Fourth Circuit

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 11,007

United Bond and Mortgage Corporation,
Appellant,

versus

Crown Central Petroleum Corporation,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, AT COLUMBIA.

ROBERT W. HEMPHILL, DISTRICT JUDGE

(Argued March 7, 1967. Decided March 10, 1967.)

Before Haynsworth, Chief Judge, and Bryan and J. Spencer Bell, Circuit Judges.

PER CURIAM:

For the reasons announced in open court, we think the District Court properly refused to entertain this collateral attack upon a final judgment of a state court having jurisdiction of this civil litigation.

Affirmed.

APPENDIX B

Title 28, United States Code:

Section 1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

Section 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs, and is between—

(1) citizens of different states;